GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Tribal Welfare Department - LTR - Revision Petition filed by Sri Kondisetty Nageswara Rao @ Bujji, S/o. Poturaju (Late), R/o. Old Market Road, Bhadrachalam, Telangana State and another against the orders of the Additional Agent to the Government, Chinturu, Alluri Sitharamaraju District in C.M.A.No.1/2020, dated:26.03.2021 to the land adm. Ac.15.25 Cts in S.No.82/C of Lakshmidevipeta (V), Yetapaka (M), Alluri Sitharama Raju District erstwhile East Godavari District - Allowed - Orders - Issued.

DEPARTMENT OF TRIBAL WELFARE (LTR.I)

G.O.MS.No. 22 **Dated:16.03.2024**

Read the following:

1. LTRP.No.37/2018, orders issued by the Special Deputy Collector, Rampachodavaram, East-Godavari District, dated: 22.11.2019 filed by Sri Lavudya Mansingh, Pichikalapadu (V), Yetapaka (M), Alluri Sitharama Raju District erstwhile East Godavari District.
2. C.M.A.No.1/2020 orders issued by the P.O.,ITDA/Additional Agent to Government, Rampachodavaram, East-Godavari District filed by Sri Lavudya Mansingh, Pichikalapadu(V), Yetapaka(M), Alluri Sitharama Raju District erstwhile East Godavari District, dated: 26.03.2021.
3. Revision Petition dated:12.04.2021 filed by Sri Kondisetty Nageswara Rao @ Bujji, S/o. Poturaju(Late) and another, R/o. Old Market Road, Bhadrachalam, Telangana State.
4. From the Tahasildar, Yetapaka (M), Alluri Sitharamarju District, parawise remarks submitted, dated:22.08.2021.
5. G.O.Ms.No.37 (SW (TW, LTR-2) Department, Dated:08.12.2021.
6. Writ Petition No.3389 & Writ Pitition (PIL) No.165/2022, dated: 03.08.2022 filed by Smt.Lavudya Madhavi, W/o. Late Maansingh & Sri Vulavala Shiva Kanaka Raju, S/o. Venkanna.

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ORDER:

In the reference 1st read above, Sri Lavudya Mansingh, S/o. Inda, erstwhile East Godavari District has filed a petition against Sri Kondisetty Nageswara Rao @ Bujji, S/o. Poturaju (Late) and Sri Sanka Rajendra Prasad, R/o. Old Market Road, Bhadrachalam, Telangana State regarding Petition Scheduled land in S.No.82/C measuring Ac.15.25 cents of Lakshmidevipeta (V), Yetapaka (M), East Godavari District so as to protect/implement LTR Act, 1959 under section 3 (2) (a) of the Andhra Pradesh State Scheduled Area Land Transfer Regulation Act 1/1959 as amended by the Regulation 1 of 1970 before the Special Deputy Collector, Rampachodavaram.

2.**Brief history of the subject case:**

- The Special Deputy Collector, Rampachodavaram, East Godavari District has dismissed the Orders in LTRP.No.37/2008, dated:22.11.2019 filed by the Sri Lavudya Mansingh, S/o. Inda, R/o. Gunduvarigudem Village, Pichikalapadu Grampanchayat, Yetapaka Mandal, Alluri Sitharama Raju District erstwhile East Godavari District as per Section 2 clause (g) of the A.P. Scheduled Area Land Transfer Regulation Act 1 of 1959 as amended by Regulation 1 of 1970. The Scheduled Land was under continuous and uninterrupted possession of non-tribes prior to the commencement of APSALTR thus the possession and enjoyment of the respondent not hit by the provisions of Land Transfer Regulation Act 1/1959 as amended by 1/70. Subsequently, the respondent got the Petition Scheduled Land through Veelunama and the transfer of land by way of testamentary disposition i.e. Veelunama is not void transfer by Virtue of section 2 , clause (g) of the AP Scheduled Area Land Transfer Regulation Act 1/1959 as amended by 1/70 vide referenced 1st read above.

- Aggrieved by the above said orders, Sri Lavudya Mansingh, S/o. Inda, R/o. Gunduvarigudem Village, Pichikalapadu Grampanchayat, Yetapaka Mandal, Alluri Sitharama Raju District erstwhile East Godavari District has filed appeal petition before the Project Officer, ITDA / Additional Agent to Government, Chinturu, Alluri Sitharama Raju District earstwhile East Godavari District under Sec 3(a)(ii) of AP Scheduled Areas Land Transfer Regulation Act 1/1959 read r/w Rules 8(1) of APSALTR-1969.

- In the reference 2nd read above, the Project Officer, ITDA / Additional Agent to Government, Chinturu, Alluri Sitharama Raju District erstwhile East Godavari District being lower appellate authority has quashed the orders passed by the Special Deputy Collector, Rampachodavaram, Alluri Sitharama Raju District erstwhile East Godavari District/Lower Court issued in the reference 1st read above.

3. Aggrieved by the above orders, vide reference 3rd read above, the Sri Kondisetty Nageswara Rao @ Bujji, S/o. Poturaju (Late), R/o. Old Market Road, Bhadrachalam, Telangana State and another have filed Revision Petition before the Government under the provisions of A.P.S.A.L.T.R.,1959 against the orders passed by the Project Officer, ITDA / Additional Agent to Government, Chinturu, erstwhile East Godavari District in the reference 2nd read above. The land is located in Lakshmidevipeta (V), Yetapaka (M), Alluri Sitharama Raju District earstwhile East Godavari District to the land adm. Ac.15.25 Cts in S.No.82/C .

4. The Project Officer, ITDA, Rampachodavaram cum the Additional Agent to the Government has been requested to furnish the detailed Parawise remarks and connected records in the subject case so as to dispose of the Revision Petition at Government level. Accordingly, the Tahasildar, Yetapaka Mandal, Alluri Sitharamaraju District has Submitted Parawise remarks on 23.08.2021 before the Appellant Authority.

5. Government have issued G.O.Ms.No.37 (SW (TW-LTR-2) Department, Dated: 08.12.2021, in favour of Revision Petitioners Sri Kondisetty Nageswara Rao @ Bujji & Sri Sanka Rajendra Prasad is allowed setting aside the order passed in CMA No.1/2020, dated:26-03-2021 of the Lower Appellant Authority/ Additional Agent to Government, Chinturu, Alluri Sitharamaraju District.

6. Aggrieved by the above orders, Smt. Lavudya Madhavi, W/o. Late Maansingh & Sri Vulavala Shiva Kanaka Raju, S/o. Venkanna, filed a Writ Petition No.3389 & Writ Pitition (PIL) No. 165/2022 under Article 226 of the Constitution of India praying to the Hon'ble High Court for declaring the action of respondent No.1 i.e Government in issuing the impugned G.O.Ms.No.37 (SW (TW, LTR-2) Department, Dated:08.12.2021, allowing the revision petition filed by the respondent No's 1 and 2 i.e. Sri Kondisetty Nageswara Rao @ Bujji & Sri Sanka Rajendra Prasad setting aside the order passed in CMA No.1/2020, dated:26.03.2021 of the Additional Agent to Government, Chinturu in derogation of the sec 3 of the APSALTR Act 1/1959 as amended by the Regulation 1 of 1970 as illegal arbitrary and violation of the fundamental rights guaranteed under Article 14, 15, 16, 19, 21 and Article 300A of the Constitution of India.

7. Having considered the matter, the Hon'ble High Court opined that the impugned Government Order is unsustainable and is accordingly set aside. The matter is remanded back to the Government for consideration afresh on the revision petition filed by the private respondents herein. Necessary orders be passed not later than two months from today.The Writ Petition is accordingly allowed and in view thereof, the writ petition (PIL) stands closed "NO COSTS".

8. On the Hon'ble High Court orders, the said Revision Petition has been posted for hearing before the Hon'ble Revision Authority on 20.01.2024, duly informing the same to the petitioner and defendants. During the course of the hearing and on perusal of the connected records/relevant materials and Para-wise Remarks submitted by the Project Officer, ITDA, Chintur cum Additional Agent to the Government, Chintur, Alluri Sitharamaraju District and written arguments filed by both parties counsels, the Revision Authority has observed that:

The revision petition is filed against the orders in CMA No.1 of 2020 before the Additional Agent to Government/Appellate authority, the appeal is allowed by setting aside the orders passed by special Deputy Collector (Tribal Welfare).

1. The schedule land is a scheduled area falling within the limits of Lakshmidevi Peta Village of Yetapaka Mandal in survey No. 82/C admeasuring Ac.15.25 cents.
2. The present revision is filed under section 6 of the AP Land Regulation 1 of 1959 as amended by the regulation 1/1970, earlier this court passed an order, Government order bearing no. 37 dated 08.12.2021 where as per the said orders this court allowed the revision petition, aggrieved by the same the respondents in the revision application approached the Hon'ble High Court of Andhra Pradesh by way of filing WP(PIL) No. 165 of 2022, WP. No. 3389 of 2022, the Hon'ble High Court of Andhra Pradesh Vide its orders dated:23.08.2023 allowed the writ petitions by setting aside the Government order and remanded back to this forum for fresh consideration and to pass necessary orders.

<u>The contentions raised by the petitioners is as follows:</u>

1. The case of the petitioners that the scheduled Land is located in Lakshmidevipeta (v) of Yetapaka Revenue Village and Mandal bearing S.No. 82/C measuring Ac.15.25 cents. This Village is a Scheduled Area under the jurisdiction of ITDA, Chinturu.

2. Final Settlement Order is issued by the then Settlement Officer/RDO, Bhadrachalam in favor of Punati Tirupataiah (died) LR Srinivasa Rao and 5 others bearing case no.11245/1987

dated:21.02.2014 for a total extent of 21.68 Hectares of which the scheduled land is one of the land parcel.

3. The petitioner further contended that initially a sanad was granted to one Aloori Appaiah on 08.12.1869 later it was purchased by Malladi Yagna Narayana through a Regd. Sale deed dated:08.12.1905 by virtue of succession Punati Srinivasa Rao got an extent of Ac.15.25 cents in survey No.82/C of Lakshmidevi Peta village, after obtaining of settlement order the Punati Srinivasa Rao, S/o. Punati Tirupataiah, has executed an unregistered will dated:16.07.2011 in favour of petitioners namely 1. Kondisetty Nageswara Rao, S/o. K.Poturaju, 2. Sanka Rajendra Prasad, S/o. Rajeswara Rao for an extent of Ac.7.6 cents each. In view of the said will the petitioners names were incorporated of the demise of said Srinivasa Rao on 15.05.2014, for which Pattadhar pass books also issued in the name of the petitioners vide PPB Nos. 1000899 and 1000847 subsequently an extent of Ac.1.00 cents in each petitioners land, was converted in to Non- Agricultural land by following due procedure, thereafter petitioners started constructing shopping complex in the said premises.

4. The petitioner further contended that even though the schedule land is tribal land the same was under the possession of non-tribal's since 1869 and the regulations of 1/1970 cannot be attracted and after due verification of physical possession only the Pattadar pass books were issued to them.

5. As per regulation 2/1970 states that non-tribe who is having continues possession of 8 years an entitled for having of land in the tribal areas as the vendors of testator is in possession of land since 1905. Further contended that the learned appellate authority without adhering the statutes and settled principles of law allowed the appeal by setting aside the orders passed in LTRP 37/2018 by the Special Deputy Collector on 24.12.2019.

The contentions of respondent are as under:

1. The contents of the respondent is that he belongs to ST (Lambada) and Respondents/petitioners here in are Non-Tribes. The Scheduled land is situated in Laxmidevipeta (V) of Yetapaka GramPanchayat and Mandal in Alluri Sitaramaraju District previously as East Godavari District which is a Scheduled Area.

2. He further contended that originally the scheduled land belongs to Tribal Land. Some of non-tribals have illegally occupied the scheduled land as against the Regulation 1/59 as amended by 1/70 of LTR and obtained Settlement Patta. The said non tribes sold away the schedule land to non tribal petitioners. Recently, Non tribal's are constructing a shopping complex and some part of lands have got transactions from non-tribal to non-tribal which is against the Regulation 1/59 as amended by 1/70. The VRO, Yetapaka has issued Adangal Pahani for the years 2014-15 for the scheduled land and clearly mentioned the respondent names. The Respondent's possession is illegal and in contravention of Regulation prevailing in the Scheduled Area. Hence Respondents are liable to be evicted.

3. The respondent herein approached before the Special Deputy Collector (TW), Rampachodavaram filed an application under section 3 of AP Scheduled Area land and transfer regulation Act 1959 as amended by the regulation 1/1970 for restoration of subject land in his favour after ejecting the petitioners herein, the same was dismissed by an order dated:22.11.2019 by observing that as per the reports submitted by Village Revenue Officer, Mandal surveyor and other officials, which resulted that the petitioners are in possession of the land and it is not in contravention to the provisions of section 3 (1) A.P.S.A.L.T.Regulation 1/1959 as amended by regulation 1/1970 against which the respondent preferred an appeal under rule 8 (1) AP scheduled areas land Transfer rules 1969 before the Additional Agent to Government the appellate authority vide its orders dated: 26.03.2021 by quashing the order passed by Special Deputy Collector.

4. On hearing the counsels on both sides and on perusal of the material available on record the sanad was granted by dominion of India vide its order dated: 08.12.1869 after changing of hands finally, it was purchased by one Maladi Yagna Narayana under a regd. Sale deed on 08.12.1905 since then the family member of Maladi were in possession of the said land, the legal heirs of Maladi Yagna Narayana sold the subject land in question to Punati thirupataiah under a regd. Sale deed on 24.11.1969 which is prior to regulation 1/1970 by virtue of possession the then settlement officer granted settlement patta to the said Thirupataiah vide case file No.11245/1947, subsequently the same was transferred to the petitioners by virtue of Will on 28.03.2014.

5. As per section 3(1) states that the transfer of immovable property in agency areas to the non tribe is and void the burden always lies within the non- tribe who is holding that land to shows that the said land was not transferred from the tribe, the findings of the Special Deputy Collector that will is not void transfer by virtue of section 2(g) of AP Schedule Area Land Transfer Regulation Act 1/1959 as amended by regulation 1/1970.

6. The appellate authority while exercising its powers passed an order by quashing the orders of Special Deputy Collector by framing certain issues on considering the pleadings of parties.

   I. Can a 3rd party file a petition/appeal in LTR Cases?
   II. Shall "Will deed" come under the definition of Transfer under section 2(g) under Regulation of 1/59 as amended by 1/70.
   III. Can an unregistered Will have same effect given the context of the scheduled land located in Agency Area Tracts?
   IV. Can the beneficiary be a Non-Tribal in Land Transactions in Scheduled Area?
   V. Can a will deed be executed in favour of stranger who is outside family given the context of the scheduled land located in Agency Area Tracts?
   VI. Who needs to bear the burden of proof in LTR Cases?
   VII. Can a person execute a will without having a clear title/patta on the date of execution of will ?

   In conclusion to the above framed issues the appellate authority came to conclusion that issuance of pattadhar pass books to the petitioners is in violation to the regulation 1/59 as amended by 1/70 as the instrument of Will is outside the scope of definition of transfer under section 2(g) of regulation 1/59 as amended by 1/70 and further concluded that unregd. Will is a valid document even in agency areas, as per the section 35 of Indian Stamps act 1899 the admissibility of document or instrument is having sanctity only when it is duly stamped and in result the appellate authority is of opinion that the Revenue Authorities issued pattas in favour of petitioners is in violation to the regulations and quashed the proceedings in LTRP No. 37/2018 dated:24.12.2019 against which the present revision is filed.

7. We are of the opinion that, the person who doesn't belongs to the tribal community having possession of the land for continuous period of not less than 8 years before the commencement of regulation which defines under regulations 2/70, herein in this case the petitioner was in possession of the said subject land prior to commencement of regulation and by virtue of sale deed the ancestor of Punati Srinivasa Rao got the said land, moreover it is under possession of non tribe since 1869 the provision under regulation 1/1970 were not attracted the said Thirupataiah acquired the land by way of agreement of sale under section 53A of transfer of property act.

8. The observations of the appellate authority with regarding to the issue No.4 and 5 non-tribal can also be beneficiary only through regulation to by 2/70. The testamentary disposition as referred in section 2(g) of the regulation 1/70 that a non-tribe who is holding land in tribal areas can execute a will in any of the person who is family members but not to a stranger, the respondent herein was from tribal community he is claiming the said land without any evidence seeking cancellation of pass books and ejection of petitioner from the subject land as the same was in violation the regulation, I am of the opinion that the transactions of the land have started since 1869 which is prior to the commencement of regulations and testator is in continuous possession of the land for decades, the petitioners names were incorporated by virtue of will, with regards to the transfer of land between non-tribals and also to the stranger who doesn't belongs to the family can also permissible under law, the petitioner is not a family member of the said Srinivasa Rao in order to challenge a will.

9. **The following cases are referred for the with regarding to the possession of non-tribe and the execution of will:**

   The Hon'ble High Court in N. Appa Rao Vs. Agency Divisional Officer reported in 1988 (2) APLJ9 which was subsequently followed in Pandi Ramulu Vs. Agent to the Government held that once Patta was granted it becomes final and possession held by a person under the said patta cannot be termed as unlawful.

   The Hon'ble High Court in Dasari Surya Chandra Rao Vs. Mandal Revenue Officer reported in 2005(2) ALD 482 when the transfer of the subject land was prior to the commencement of the regulations the authority have no jurisdiction to deal with the said transaction after the commencement of said regulations.

The Hon'ble Supreme Court in Surendra Pal Sarma Vs. Surjith Kur (2019) Held that an unregd. will could be proved by leading evidence of its possession and custody by the testator (the person who made the will). The Court also held that the absence of registration did not make the will in valid.

i. As stated supra the unregd. will also having precedence over the regd. will. If there is any suspicion regarding the will it can be challenged in the court, under the provisions of section 18 of Indian registration act there is no stipulation for registration of will, irrespective its registration as long as it complies with all point regarding the validity of will further transferring of property through wills provides indivuals with strategic and controlled methods to pass on their immovable properties while injuring their wishes or respecting, a will whether registered or unregistered are always subject to challenge and when it is challenged before the competent court it must be go through entire trail procedure in order to prove the execution of said will.

ii. Here in this case the family members of Punati Srinivasa Rao were not claiming said property the respondent who is tribe and stranger claiming the said property without having any right.The Hon'ble Apex court in the case of Penta Kota Satyanarayana held that when the testator executed a will in sound mind and disposing in state of mind the circumstances in respect of the falsification of the suspicion circumstances as to be proved.The Hon'ble High Court in various Judgments decided that once Pattadhar Passbooks issued in any ones name, only the competent civil court has the Jurisdiction to cancel the said Pattas, here in this case the land is in Agency areas, which is the scheduled land, as per the regulation 1/59, as amended in 1/70, it is outside the scope of regulation, moreover the said transaction had happened prior to the commencement of act, hence it does not beyond the scope of regulation.

10. Moreover the respondent herein is a 3rd party who belongs to a tribal community claiming the subject land which under the possession of the testator more than decades challenging the same is not valid being a 3rd party had no focus to question the validity of the will as it is the right of individual to execute the such will.

11. The appellate authority failed to observed that the land in question is under the possession of non-tribe before or after commencement of regulation by virtue of settlement Patta the said Srinivasa rao executed a will in favour of a petitioner, he also satisfied by having a long standing possession over the said land for a continuous period of 8 years, the appellate authority failed to appreciate that the petitioners are in possession of the subject land by virtue of will, the respondent who is 3rd party, and who was never in possession of such land was challenging the will, who is not in family member of said Srinivasa Rao.

12. Earlier this court passed G.O.Ms.No. 37 (SW (TWLTR.I) Department dated:08.12.2021 by allowing the revision filed by the petitioner aggrieved by the same the respondent approached the Hon'ble High Court of AP got filed WP. No. 3398 of 2022 and WP (PIL) No. 165 of 2022. The Hon'ble High Court was pleased to set aside the Government Order dated:08.12.2021 by remanded back to this court for fresh consideration with regarding to the issues framed by the appellate authority in respect of executing the will in favour of stranger, and a non-tribal can be the beneficiary of the schedule area the issues were answered accordingly the aforementioned para it is pertaining to submits that the Srinivasa Rao who executed a will is the legal heir of thirupataiah who purchased the same by way of agreement of sale on 24.11.1969 which is prior to the regulation 1 of 1970, where the raithu Vari Patta was granted in case No.1145/1987 vide it orders dated:17.11.1987 an appeal was preferred by M.R.O before the director of settlements, an order dated:30.12.1991 in AP No.3/88 remanded the same to the settlement officer for verification of extent of land.

13. In the circumstances stated above and in view of the findings on the perusal of the records submitted by the parties this court is of opinion that the possession of petitioner was not illegal and the same cannot termed as contravention to the regulation and all the transactions with regarding to the subject land were prior to the commencement of A.P Scheduled Area Land Transfer Regulation Act 1 of 1959 as amended by 1 of 1970 the respondent herein was not having any right over the property as the said transaction and said property was not done between tribe and non-tribe the petitioner herein were in lawful possession of the subject land.

14. In result, this court is of considered opinion that the appellate authority erred in quashing the order of Special Deputy Collector beyond its jurisdiction vide its orders dated:26.03.2021 in CMA No.01 of 2020, accordingly the revision petition is allowed by setting aside orders passed in CMA No. 1 of 2020 of the lower appellate authority/ Additional Agent to the Government, Chinturu by upholding the orders passed in LRTP No.37 of 2018 dated:22.11.2019 by the Special Deputy Collector.

15. In view of the same the collector and district magistrate Alluri Sitaramaraju District, is requested to take necessary action in the matter accordingly.

9. The Government after careful examination of the revision petition and the circumstances stated supra and in exercise of the powers conferred under Section 6 of A.P.S.A.L.T.R., 1959 as amended by Reg. 1/70, the orders passed by the Appellate Authority, The Project Officer, ITDA, Rampachodavaram, Alluri Sitharamaraju District in C.M.A.No. 1/2020, dated: 26.03.2021 are hereby set aside and the Revision petition filed by Sri Kondisetty Nageswara Rao @ Bujji & Sri Sanka Rajendra Prasad, R/o. Old Market Road, Bhadrachalam, Telangana State in C.M.A.No.1/2020, dt.26.03.2021 with regard to the land in adm.AC.15.25 cts in S.No.82/C of Lakshmidevipeta (V), Yetapaka (M), Alluri Sitharamaraju District is allowed and interim orders passed if any are hereby vacated in the matter.

10. The Collector & District Magistrate, Alluri Sitharamaraju District is requested to take necessary action in the matter accordingly.

11. This order shall be published in apegazette.cgg.gov.in.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF A NDHRA PRADESH)

KANTILAL DANDE
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Agent to Government/Collector & District Magistrate,
Paderu, Alluri Sitharamaraju District. PIN-530 011.
The Additional Agent to Govt. cum Project Officer, ITDA, Chinturu, Alluri Sitharamaraju District. Pin.533347
The Special Deputy Collector, Rampachodavaram,
Alluri Sitharamaraju District. PIN-533 288
Sri K.Ramalingeswara Rao and Eswaraiah Chowdary Advocates,
Chinturu, Alluri Sitharamaraju District. Pin.533347
Sri Dannana Ramu, Advocate, D.No.13-2-122/1,Opp.RTC Bus stand ,
Behind Medlife Hospital, Bhadrachalam-507111.
Sri Kondisetty Nageswara Rao @ Bujji, S/o. Poturaju (Late)
R/o. Old Market Road, Bhadrachalam, , Telangana State .Pin. 507111.
Sri Sanka Rajendra Prasad, S/o. Rajeswara Rao,
R/o. Old Market Road, Bhadrachalam, Telangana State. 507111.
Sri Lavudya Madhavi, W/o. Mansingh,, Gunduvarigudem Village,
Pichukulapadu Panchayat, Yetapaka Mandal, Alluri Sitharamaraju District.

Copy to:
The OSD. to Hon'ble Dy. Chief Minister (TW)
The P.S. to Principal Secretary to Government (TW)
SF/SC.

// FORWARDED :: BY ORDER //

M. Srinivasa Rao
SECTION OFFICER